Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 231 of the 129th G.A (LSC 129 1342-3).

Date: June 16, 2011

Status: In House Agriculture & Natural Resources

Sponsor: Rep. Wachtmann

Local Impact Statement Procedure Required: No

Contents: Implements provisions of the Great Lakes-St. Lawrence River Basin Water Resources Compact by creating a water withdrawal and consumptive use permitting program

State Fiscal Highlights

- The Water Management Fund (Fund 5160) in the Department of Natural Resources (DNR) would gain an unknown amount of revenue from the $1,000 application fee for a water withdrawal and consumptive use permit. The actual amount of revenue would depend on the number of facilities that would be subject to the permitting program.
- The bill creates the Water Resources Review Commission to hear appeals of decisions by the Chief of the Division of Soil and Water Resources (DSWR). Members would receive a stipend of $150 per day, plus reimbursement for travel, hotel, and other expenses incurred in the course of official Commission duties.
- The DSWR could incur additional administrative costs, either from Fund 5160 line item 725620, Water Management, or GRF line item 737321, Division of Soil and Water Resources, for administering the bill's provisions, including the permitting program, conducting five-year cumulative impact assessments, and supporting the Water Resources Review Commission.

Local Fiscal Highlights

- County courts of common pleas could incur minimal additional costs if decisions of the Water Resources Review Commission are appealed to the courts.

Detailed Fiscal Analysis

The bill implements certain provisions of the multi-state Great Lakes-St. Lawrence River Basin Water Resources Compact by (1) establishing a permitting program for withdrawal and consumptive use of water in the Lake Erie watershed, (2) establishing a voluntary water conservation program, and (3) requiring an assessment of cumulative withdrawal and consumptive uses of water from the Lake Erie watershed. These provisions primarily affect the Department of Natural Resources (DNR). Their fiscal effects are discussed below.

Water withdrawal and consumptive use permits

The bill requires DNR's Division of Soil and Water Resources (DSWR) to establish a program to issue permits for the withdrawal and consumptive use of water from the Lake Erie Watershed above certain threshold amounts. The LSC bill analysis contains a full description of the facilities that are both subject to and exempt from the permitting program. Applicants for a permit must submit a nonrefundable $1,000 application fee, which will be deposited into the Water Management Fund (Fund 5160). Under the bill, a permit would be valid for the life of a facility's applicable withdrawal and consumptive use capacity, and could be transferred in full or in part to a new owner of a facility or part of a facility. While the bill requires the Chief of DSWR to issue new permits when ownership of all or part of a facility is transferred, it is unclear if each permittee would be required to submit an application and pay the fee when this occurs. Thus, to summarize, the fee would mainly be collected for new facilities as the bill would not require renewal of a permit, and it is unclear if the fee would be required for cases in which new permits are issued when ownership of a facility is transferred.

The actual revenues to Fund 5160 would depend on the number of facilities that would be subject to the permitting program. Overall, the thresholds for the water withdrawal and consumptive use capacity of facilities that would be required to obtain a permit are greater than the current thresholds required of facilities that are subject to DNR's Water Withdrawal Facilities Registration Program. In 2009, there were 1,635 facilities subject to the Water Withdrawal Facilities Registration Program; presumably the number of facilities subject to the permitting program required under the bill would be smaller.

Under the bill, Fund 5160 would be used as a source of operating support for DSWR to administer the program, presumably through the receipt of the $1,000 application fee. The fund already collects fees from and serves as a source of operating costs for DNR's existing Water Withdrawal Facilities Registration Program. Any additional costs to operate the permitting program under the bill would depend on the extent to which the staff and resources associated with the new permitting program could be integrated with the existing program.

Assessment of cumulative impacts

The bill requires DSWR to assess the cumulative impacts of withdrawals and consumptive uses of water from the Lake Erie watershed every five years. After each assessment, the Chief of DSWR must submit a report on such impacts to the Governor, the Speaker of the House, and the President of the Senate. This requirement would likely not impose a substantial ongoing cost on DSWR, but may result in some additional administrative expenses to conduct the assessment and issue the report every five years.

Water Resources Review Commission

The bill creates the Water Resources Review Commission as an adjudicatory body to hear appeals of decisions made by the Chief of DSWR made under the bill and the Great Lakes-St. Lawrence River Basin Water Resources Compact. The Commission would consist of five members appointed by the Governor with the advice and consent of the Senate. Members would be entitled to a stipend of $150 per day when engaged in the official duties of the Commission and when traveling in connection with those duties, and would be reimbursed for all official travel, hotel, and other expenses in accordance with current Office of Budget and Management travel rules. The bill does not specify the source of funding for these costs, but likely sources include Fund 5160 or GRF appropriation item 737321, Division of Soil and Water Resources.

The bill allows decisions of the Commission to be appealed to the court of common pleas in the county in which the subject of the decision occurred. If such appeals are made, the courts could incur minimal additional administrative costs to handle the cases.

Synopsis of Fiscal Changes

- The substitute bill makes various changes to definitions, withdrawal and consumptive use thresholds, permitting requirements and exemptions, and appeal processes. These changes do not have a substantive impact on the bill's fiscal effect in comparison to the "As Introduced" version, with respect to permit fees, the assessment of cumulative impacts, the Water Resources Review Commission, or other adjudication costs.
- The substitute bill eliminates the provision in the "As Introduced" version that authorized the Division of Soil and Water Resources (DSWR) to establish a voluntary water conservation program. Any costs that DSWR would have incurred to create such a program under the "As Introduced" version would not be incurred under the substitute bill.